

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #2, INC.	)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE	)	
AND NECESSITY TO CONSTRUCT A CELL SITE	)	CASE NO. 94-164
OFF RICKETTS ROAD SOUTHWEST OF	)	
MORGANFIELD IN UNION COUNTY, KENTUCKY	)	

O R D E R

On August 31, 1994, the Commission entered a final Order in this case granting Kentucky RSA #2 a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower near Morganfield, Kentucky ("the Morganfield cell site").

On November 30, 1995, the Commission received a letter from David Shreve, Sr., an intervenor in this case. In the letter, Mr. Shreve inquired about the status of the tower construction and asked whether Kentucky RSA #2 still has the authority to construct the tower.

KRS 278.020(1) states, inter alia, that the authority conferred by the issuance of the certificate shall be void, unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent. The statute further states that the beginning of any new construction or facility in good faith within the time prescribed by the Commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

On December 13, 1995, Kentucky RSA #2 filed a notification with the Commission. The Commission mailed a copy of the notification to Mr. Shreve on December 21, 1995 and informed him that any comments he might have regarding it should be filed with the Commission by January 3, 1996. No comments were filed.

The notification states that Kentucky RSA #2 began construction at the Morganfield cell site on or about September 23, 1994. It also states that construction has been suspended because Kentucky RSA #2 is negotiating with neighboring landowners who filed an action against it in Union Circuit Court on November 23, 1995. The landowners, seeking damages and to enjoin construction of the tower, allege that the construction would violate a restrictive covenant.

Kentucky RSA #2's notification also includes a letter from the Kentucky Airport Zoning Commission ("KAZC"), extending the time for completion of the Morganfield cell site project to May 5, 1997. Kentucky RSA #2 requests the same extension from the Commission.

Kentucky RSA #2 has exercised its certificate in the manner set out in KRS 278.020(1). It began construction in good faith within the prescribed time and it is prosecuting the construction with reasonable diligence in light of intervening litigation concerning the site. Consequently, the authority conferred by the issuance of the certificate is not void.

Having reviewed the notification and being otherwise sufficiently advised, the Commission finds that Kentucky RSA #2's

request, which is being treated as a motion, should be granted in part.

IT IS THEREFORE ORDERED that:

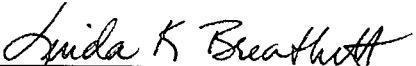
1. Kentucky RSA #2's motion for an extension through and including May 5, 1997 is granted.


2. The certificate of Kentucky RSA #2 for the Morganfield cell site is extended for six months, beginning on the date of this Order.

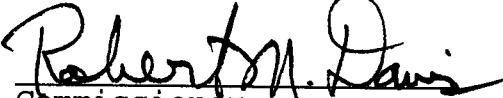
3. At the end of the six-month period, Kentucky RSA #2 shall file a report with the Commission on the status of the construction so that the Commission can determine whether Kentucky RSA #2 is still prosecuting the construction with reasonable diligence.

Done at Frankfort, Kentucky, this 8th day of February, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director